

## REMARKS

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

By this Amendment, Claims 1 and 9 are amended only to correct minor informalities, and Claim 14-17 are added. Thus, Claims 1-17 are pending in this application. Support for new Claim 14 can be found, for example, in original Claim 1 and page 8, lines 22-25 of the specification. Support for new Claim 15 can be found in original Claim 2. Support for new Claims 16 and 17 can be found, for example, in Fig. 1. No new matter is added.

The Official Action rejects Claim 10 under 35 U.S.C. §112, second paragraph. Intervening Claim 9 is amended to depend from Claim 8 to obviate the rejection. That is, Claim 8 provides antecedent basis for the "breakable connecting means" recited in Claim 10. Thus, withdrawal of the rejection is respectfully requested.

The Official Action rejects Claims 1-4, 8, 9, 12 and 13 under 35 U.S.C. §103(a) over U.S. Patent No. 5,839,627 to Hicks et al. ("Hicks"), in view of U.S. Patent No. 5,484,101 to Hedberg. The rejection is respectfully traversed.

Independent Claim 1 is directed to a sealed package for pourable food products. The package includes, *inter alia*, at least one removable portion, a pull-off opening means comprising a rigid plate integral with the removable portion, and a pull-tab of sheet material interposed between the removable portion and the plate and attached to both.

The combination of Hicks and Hedberg fails to disclose, and would not have rendered obvious, the combination of features recited in independent Claim 1,

including a pull-tab of sheet material interposed between the removable portion and the plate and attached to both.

Hicks discloses a container 200 having a reclosable pour spout (see Figs. 6-9). As shown in Fig. 9 of Hicks, the spout includes a tab 220 attached to an inner membrane seal 208 provided with a slug 210 of the container. The Official Action takes the position that the tab 220 and the inner membrane seal 208 together correspond to the claimed rigid plate, and that the slug 210 corresponds to the claimed removable portion. The Official Action states that the tab 220, the inner membrane seal 208 and the slug 210 (collectively said to be the "pull-off opening means") are extractable from the spout portion 226 by the pulling action shown by arrow 222 in Fig. 9.

The Official Action acknowledges that Hicks fails to disclose a pull-tab of sheet material interposed between the removable portion and the plate and attached to both as recited in independent Claim 1, but takes the position that these features are disclosed by Hedberg. Hedberg discloses an opening arrangement that includes an outer pull-tab strip 4 which initially covers a hole 3 in the package 2 (see Figs. 6 and 7). To open the hole 3, the pull-tab strip 4 is removed entirely by pulling the portion 5 of the pull-tab strip 4 (see col. 3, lines 17-21 and Figs. 6 and 7). The Official Action takes the position that the pull-tab strip 4 corresponds to the claimed pull-tab, and that it would have been obvious to modify Hicks' pour spout to include Hedberg's pull-tab 4 "for the predictable result of sealing the opening and connecting the rigid plate to the removable portion" (see paragraph "9" on page five of the Official Action). Applicants respectfully disagree.

Fig. 9 of Hicks shows that the slug 210 ("removable portion") and the inner membrane seal 208 ("rigid plate") are bonded together. This "insure[s] that when the inner membrane seal is moved that the bond between the inner membrane seal and the slug will be strong enough to prevent them from coming or tearing apart" (see col. 7, lines 24-32). That is, the slug 210 ("removable portion") and the inner membrane seal 208 ("rigid plate") remain bonded together when the inner membrane seal 208 is pulled away from the container 200. Thus, if the removable pull-tab strip 4 of Hedberg was interposed between the slug 210 ("removable portion") and the inner membrane seal 208 ("rigid plate") of Hicks, the slug 210 and the inner membrane seal 208 would not be bonded together. Accordingly, one skilled in the art would not interpose the pull-tab strip 4 of Hedberg between the slug 210 ("removable portion") and the inner membrane seal 208 ("rigid plate").

Moreover, it is unclear how the pull-tab strip 4 of Hedberg could be interposed between the slug 210 ("removable portion") and the inner membrane seal 208 ("rigid plate") in view of Hicks' disclosure that the slug 210 and the inner membrane seal 208 remain bonded together even when the inner membrane seal 208 is pulled away from the container 200. Hedberg does not disclose that the pull-tab strip 4 includes an adhesive on both top and bottom surfaces. Further, Hedberg discloses that the pull-tab strip 4 is entirely removed and discarded. Thus, modifying Hicks' pour spout to include Hedberg's pull-tab 4 would render Hicks' inner membrane seal 208 and the slug 210 (together said to be the "pull-off opening means") and Hedberg's pull-tab 4 unsatisfactory for their intended purposes (MPEP §2143.01(V)), and would change the principle of operation of the pull-tab 4 (MPEP §2143.01(VI)). One skilled in the art would not have made such a modification of Hicks' pour spout. The Official

Action fails to consider the references and claims as a whole and relies on impermissible hindsight using knowledge gleaned only from Applicants' disclosure (see MPEP §2145(X)(A)).

In addition, interposing Hedberg's pull-tab strip 4 between Hicks' slug 210 ("removable portion") and the inner membrane seal 208 ("rigid plate") would not "seal the opening" of Hicks' container 200, as suggested in paragraph "9" of page five of the Official Action, because the seal would already be provided by the slug 210. Further, interposing Hedberg's pull-tab strip 4 between Hicks' slug 210 and the inner membrane seal 208 would not "connect the rigid plate to the removable portion" because, as discussed above, the pull-tab strip 4 is not an adhesive and Hedberg discloses that the pull-tab strip 4 is entirely removed and discarded. Thus, the pull-tab strip 4 would not provide a bond between the Hicks' slug 210 ("removable portion") and the inner membrane seal 208 ("rigid plate").

Accordingly, it would not have been obvious to modify the reclosable pour spout of Hicks with the pull-tab strip 4 of Hedberg. Thus, the combination of Hicks and Hedberg fails to disclose, and would not have rendered obvious, the combination of features recited in independent Claim 1, including a pull-tab of sheet material interposed between the removable portion and the plate and attached to both. Therefore, Claim 1 is patentable over the combination of Hicks and Hedberg.

Claims 2-13 are patentable over the applied references at least by virtue of their dependence from patentable independent Claim 1, as well as for the additional features these claims recite. For example, Claim 2 recites that the pull-tab comprises a main portion attached to the removable portion, and an end portion folded over the main portion and attached to the plate. As discussed above, the

Official Action takes the position that Hedberg's pull-tab strip 4 corresponds to the claimed pull-tab. The pull-tab strip 4 has a free, unsealed portion 5 which is folded over the pull-tab strip 4 (see Figs. 3, 5 and 6; and col. 2, lines 46-48). The Official states that the free, unsealed portion 5 corresponds to the claimed end portion. However, the free, unsealed portion 5 is not attached to any rigid plate. The free, unsealed portion 5 remains free to be grasped and pulled by a user to open the packaging container (see col. 4, lines 17-21). Thus, Claim 2 is patentable over the combination of Hicks and Hedberg for these additional reasons.

New Claims 14-17 are presented for consideration. Independent Claim 14 recites a sealed package for pourable food products. The Claim 14 package includes, *inter alia*, a pull-off opening means comprising a rigid plate attached to the removable portion. Claim 14 recites that the package comprises a pull-tab of sheet material interposed between the removable portion and the plate, and that the pull-tab being attached to both the removable portion and the plate. Thus, independent Claim 14 is patentable over the applied references for at least the reasons discussed above with respect to Claim 1.

Claim 15 depends from claim 14 and is similar to Claim 2. Thus, Claim 15 is patentable over the applied references for at least the reasons discussed above with respect to Claim 2.

Claim 16 recites that the pull-tab is configured to remain attached to the plate and the removable portion when the plate is extracted from the frame. As discussed above, Hedberg discloses that the pull-tab strip 4 is entirely removed and discarded when the hole 3 of the package is opened. The pull-tab strip 4 is not configured to remain attached to the any part of the package when the package is opened. Thus,

Claim 16 is patentable over the applied references for at least the reasons, as well as by virtue of its dependency from independent Claim 14. Claim 17 recites that the plate is connected to the removable portion via the pull-tab. As discussed above, Hicks discloses that the slug 210 ("removable portion") and the inner membrane seal 208 ("rigid plate") are bonded together directly (see Fig. 9). The slug 210 and the inner membrane seal 208 cannot be connected by Hedberg's pull-tab strip 4, as discussed above. Thus, Claim 17 is patentable over the applied references for at least the reasons, as well as by virtue of its dependency from independent Claim 14.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date : January 21, 2009

By:



Matthew L. Schneider  
Registration No. 32814

David R. Kemeny  
Registration No. 57241

P.O. Box 1404  
Alexandria, VA 22313-1404  
703 836 6620